violate the confrontation clause (*United States v. Miller*, 830 F.2d 1073, 1077 (9th Cir. 1987), under either *Roberts* or *Crawford*.

What constitutes a business record is an issue of state law and does not raise a federal question. *Palmer v. Hoffman*, 318 U.S. 109 (1943), was an interpretation of an early federal evidentiary rule and does not establish a constitutional principle that is applicable to the states under 28 U.S.C. § 2254(d)(1). *See Early v. Packer*, 537 U.S. 3, 10, 123 (2002). (Pet. App. at 4.)

At Petitioner's trial, the records at issue were prepared in the routine course of business and were introduced by the lab director. Consequently, it was reasonable for the state court to determine that Petitioner's right of confrontation was not violated by the admission of the DNA evidence.

Certiorari is not appropriate as to this claim because the determination of trustworthiness is a fact-based inquiry. The state court was not objectively unreasonable in deciding that the non-testimonial business record was trustworthy.

Finally, any error was harmless. Petitioner testified in this case and acknowledged that it was his father's blood on the truck, keys, clothing and in Petitioner's shower. He explained that his father used Petitioner's old jeans to do gardening and showered in Petitioner's bathroom because of his wife's allergies. Therefore, any error in admitting the DNA evidence was harmless.

Certiorari must be denied because *Crawford* limited confrontation to testimonial hearing; business records are generally considered reliable without confrontation; and, the state court found these records reliable. Further, Petitioner acknowledged it was his father's blood on the truck, keys, clothing and Petitioner's shower so any error was harmless.

CONCLUSION

For the foregoing reasons, Respondent submits that the Petition for Certiorari should be denied.

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Respectfully submitted,

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